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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

BLACK EMERGENCY RESPONSE TEAM,)
et al.,)
)
)
 Plaintiffs,)
)
vs.)
)
)
GENTNER DRUMMOND, et al.,)
)
)
)
 Defendants.)
)
)

CASE NO. CIV-21-1022-G

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE
BEFORE THE HONORABLE CHARLES GOODWIN
UNITED STATES DISTRICT JUDGE
JANUARY 25, 2022

**Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.**

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1 (Proceedings held January 25, 2022.)

2 THE COURT: All right. Good afternoon, everyone.
3 This is Judge Goodwin.

4 The Court calls the case of Black Emergency Response Team,
5 et al., vs. John O'Connor, et al. It's Case No. CIV-21-1022,
6 here in the United States District Court for the Western
7 District of Oklahoma.

8 I'll have counsel make their appearances. Let's start
9 with the plaintiffs. Who do we have on the line? Anyone here
10 for the plaintiffs?

11 MS. LAMBERT: Meagan Lambert for the plaintiffs.

12 THE COURT: I'm sorry. Would you state that again?

13 MS. LAMBERT: Yes. Meagan Lambert for plaintiffs.

14 THE COURT: All right. Anyone else?

15 MS. WATSON: Leah Watson for plaintiffs.

16 MS. TORRES: Genevieve Bonadies Torres for
17 plaintiffs.

18 (Inaudible) for the plaintiffs.

19 MR. STEIN: Gary Stein from Schulte, Roth & Zabel
20 for the plaintiffs. Good afternoon, Your Honor.

21 THE COURT: Anyone else for the plaintiffs?

22 (No response.)

23 THE COURT: All right. For the defendants, who do
24 we have on the line?

25 MR. WEST: Jack West with the attorney general's

1 office for -- to say in short, for defendants 1-18.

2 MR. FERGUSON: Andy Ferguson from the attorney
3 general's office in that same capacity.

4 THE COURT: Anyone else for the defendants?

5 MR. WEITMAN: Yes, Your Honor. Dan Weitman and
6 Tina Ikpa for the OU Regents.

7 MR. FUGITT: And Andy Fugitt and Justin Cliburn for
8 the Edmond Public School defendants, Your Honor.

9 THE COURT: All right. Anyone else on the line?

10 (No response.)

11 THE COURT: Okay. Let's start by going through
12 just some general guidelines for telephonic conferences. I
13 know that we have all gotten at least more acquainted with how
14 these should proceed, but let's go through the guidelines
15 anyway.

16 First, because this is being recorded by a reporter, I'll
17 have you state your name every time you begin speaking. So
18 even if you stated it before, I want you to say it again each
19 time you address the Court.

20 Second, I would ask that anyone who's on a speakerphone,
21 if you want to give it a shot, that's fine. I will tell you
22 that, generally speaking, it's almost always the case that
23 using the phone's handset rather than the speakerphone makes a
24 definite difference on the quality of the communication, and
25 we'll certainly be able to hear you better if you actually use

1 the handset, unless you have a speakerphone with a really good
2 microphone.

3 Third, I would ask, if you're not speaking, please mute
4 your line. And I can already hear some background noise, and
5 so putting your line on mute will hopefully help with that.

6 Fourth, if you are ever unable to hear me or any other
7 speaker, then shout out, let us know, and we'll do what we can
8 to resolve the issue.

9 Beyond that, I just say that, in general, when presenting
10 argument by phone, it's particularly important to speak slowly
11 and deliberately and loudly. I want you to resist the urge to
12 talk as if you're in a normal phone conversation and fall into
13 the habits that I think we all have in speaking on the phone.
14 Given the context and the fact that this is being recorded by a
15 reporter, we certainly need you to speak a little bit more
16 slowly and deliberately than you would otherwise.

17 So let's proceed. I'll tell you my view of the purpose of
18 this status conference, and then I'll certainly allow counsel
19 to present whatever they need to as we go along. But from my
20 standpoint, after several unopposed extensions, it appears that
21 -- now that plaintiffs' motion for preliminary injunction is
22 fully briefed.

23 I do note that there are evidentiary objections raised
24 through, I think we have two motions to strike, and the briefs
25 are still coming in on one of those motions. But other than

1 that, it appears that the motion for preliminary injunction is
2 fully briefed. And so I wanted to hold a status conference now
3 on the procedural issues that we need to address about how the
4 motion will be presented and decided that involves some issues
5 about, in particular, whether we need to have a hearing, an
6 evidentiary hearing, and what the nature of that hearing would
7 be.

8 So let's start with the plaintiffs' counsel. I don't know
9 if there's one attorney in particular that's going to address
10 the issues for the plaintiffs. It would certainly be useful
11 if -- if we can narrow the presentation to just one attorney
12 for each side, but I'll give you some discretion on that.

13 So who'd like to speak for the plaintiffs?

14 MR. SYKES: Your Honor, this is Emerson Sykes for
15 the ACLU -- from the ACLU national on behalf of all plaintiffs.

16 THE COURT: All right. Very good.

17 Well, tell me -- let me ask you about one threshold issue,
18 and that's the motions to dismiss. What's your view as to the
19 timing of a decision on those motions as compared to the motion
20 for preliminary injunction? That is, do the motions to dismiss
21 need to be decided before any hearing? Do they need to be
22 decided at the same time that the Court determines the
23 preliminary injunction matters? What is plaintiff's position
24 on that?

25 MR. SYKES: Thank you, Your Honor.

1 I think we would like to get a decision, you know, on all
2 of the pending motions as soon as possible.

3 THE COURT: I'll tell you right now, I can
4 generally hear you, but the quality is not great.

5 MR. SYKES: Sorry. Is this better?

6 THE COURT: That is better.

7 MR. SYKES: Okay. I'll try to speak slowly and
8 clearly and loudly.

9 THE COURT: Good.

10 MR. SYKES: I don't think that you need to wait or
11 need to order them particularly in terms of the motion for
12 preliminary injunction because the motions to dismiss came from
13 the Oklahoma University defendants and the Edmond Public School
14 defendants, but the state defendants, the AG and the state
15 Board of Ed and the State Board of Regents and the governor did
16 not move to dismiss.

17 So I think the questions before the Court with regard to
18 the preliminary injunction are -- would remain, however the
19 Court finds on the motions to dismiss.

20 THE COURT: Let me ask plaintiffs this question.
21 And before I do, I'll emphasize that you have the right to
22 assert your lawsuit as you want. I'm not trying to tell you or
23 coerce you into any point of view of -- I do wonder, now that
24 you have seen those motions to dismiss, are there -- and those
25 motions raise standing issues and they raise questions about

1 who is a proper defendant to this lawsuit. Is there an amended
2 complaint that you might be willing to file that would resolve
3 some or all of those questions? That is, now that you have had
4 the benefit of seeing the -- the legal issues and -- and
5 responding to those as far as all of the various defendants
6 that you have included in the lawsuit, do you think that you
7 can narrow it in any way that might obviate some of those
8 issues?

9 MR. SYKES: Thanks, Your Honor.

10 We stand behind the briefing that we -- you know, in
11 opposition to the motion to dismiss. We think that we properly
12 named all of the defendants in their official capacities. And
13 so in that way, I think we rest on the papers.

14 We have been in touch with defendants' counsel and have
15 been talking especially with the Edmond Public Schools about
16 addressing the particular issues -- they raised a number of
17 issues -- but the issue around whether it would be better or
18 preferable to name the district rather than the members of the
19 board in their official capacity.

20 So on that particular issue, it's -- you know, the --
21 again, we don't think that there's any problem with the way we
22 pleaded the case. If defendants are willing to stipulate that
23 they would not raise an objection if we named, for example, the
24 district rather than the board members in their official
25 capacity, and the Court, you know, felt fit to give us leave to

1 amend the complaint in that regard, we don't have any
2 particular objection to doing that, just noting that, as I said
3 a few times, the -- we do think that we properly pled the case
4 up to this point.

5 THE COURT: All right. I think the more efficient
6 way to proceed is I'm going to ask my other questions of
7 counsel for the plaintiffs, and then we'll hear from the
8 defendants as to all of these issues.

9 So my next question is, really, is an evidentiary hearing
10 needed to decide your motion? And if so, what would be the
11 nature of that hearing? So the threshold question, though, is
12 do you think that you need to present evidence at the hearing
13 or stand solely on the briefs as they're submitted?

14 MR. SYKES: Thanks, Your Honor. I think we do not
15 have any particular plans to request an evidentiary hearing.
16 We don't think it's necessary, with the caveat that there are
17 outstanding questions as to some of the evidence that we
18 submitted. And depending how the Court decides to review or
19 not review that evidence, you know, we may have to re-evaluate
20 our plans, but at this point we don't see a particular need for
21 an evidentiary hearing at this point.

22 THE COURT: All right. Well, let me hear then from
23 counsel for the defendants. And I understand that we have some
24 different defendant groups. If there was one attorney who can
25 speak for the full set of defendants, that would be preferable,

1 but I understand that they -- that may not be what the parties
2 choose given their different entities and interests involved.

3 So who would speak for the defendants?

4 MR. WEST: Your Honor, this is Zach West again with
5 the attorney general's office. I will start off, although I do
6 suspect, or expect, I guess, that the OU and Edmond defendants
7 counsels will also probably -- will want to speak, especially
8 since I think your first question applies more to them than it
9 would to us as to our position on when the motions to dismiss
10 would be heard.

11 THE COURT: All right. Well, Mr. West, tell me a
12 little bit about those threshold questions. I mean, first it
13 was how the motions to dismiss play into the preliminary
14 injunction hearing schedule. And so for the state defendants
15 who have no motion to dismiss, do you have any concern or
16 position on that?

17 MR. WEST: No. I think our position on that, Your
18 Honor, would just be neutral. Obviously, we have not yet filed
19 a motion to dismiss or a motion on the pleadings. And so for
20 our defendants, I'm not sure it would -- it would make a
21 difference either way. So I don't know that we have a
22 preference either way on which or what is necessarily resolved
23 first.

24 THE COURT: All right. Beyond that, Mr. West,
25 what's the state defendant's position as to the need for an

1 evidentiary hearing and what would be the nature of that
2 hearing?

3 MR. WEST: Yes. We would agree with the
4 plaintiffs, we don't have any plans to request an evidentiary
5 hearing either. We think that this case, as I believe you
6 stated in your scheduling order, it could be stipulated to that
7 you decide this case on the -- or I believe at least at the
8 injunction phase, decide this on the briefs and the exhibits
9 already submitted. Obviously, a stipulation on that point to
10 our part would not be that we stipulate that they're all true,
11 but just stipulate that this is a case that does not
12 necessarily need additional evidentiary hearing, and so we
13 don't plan on requesting one.

14 Indeed, we would be fine with not having a hearing at all
15 if you wanted to just decide the issues without any kind of a
16 hearing, although on that issue -- on that question I think
17 we're a little bit more neutral. We're not opposed to an
18 argument hearing with just counsel arguing, but we're also not
19 asking for one either. I think we're somewhat neutral on that
20 question, but not --

21 THE COURT: All right. Slowly and deliberately.

22 MR. WEST: Yes, sir. That was about all that I had
23 to say on -- so we are not asking for an evidentiary hearing.
24 We do not think that one is necessary. And we are not even
25 asking for a hearing overall, although we are not opposed to an

1 argument hearing, assuming we can all get one to work with our
2 schedules.

3 THE COURT: All right. Let me turn then to the
4 remaining defendants. Who else would like to address the
5 Court?

6 MR. WEITMAN: Your Honor, this is Dan Weitman for
7 OU.

8 THE COURT: Go ahead. Tell me about the positions
9 on these procedural issues that -- that the OU defendants would
10 take.

11 MR. WEITMAN: Thank you, Judge. As to the motion
12 to dismiss, I don't know that it needs to be decided before the
13 motion for preliminary injunction, but at least in conjunction
14 with that motion it would need to be decided because, you know,
15 the issues raised in the motion to dismiss we think are
16 threshold. So I don't know that you can get to the motion for
17 preliminary injunction, against OU anyway, without dealing with
18 the motion to dismiss.

19 As far as an evidentiary hearing, OU does not believe that
20 there needs to be an evidentiary hearing. We believe that all
21 of the evidence has been submitted with objections to that
22 evidence and the Court can rule on that as it sees fit and can
23 rule on the briefs with that. So we don't see the need for an
24 evidentiary hearing in this matter.

25 THE COURT: All right. Anyone else that would

1 address the Court on behalf of any remaining defendants.

2 MR. FUGITT: Your Honor, this is Andy Fugitt for
3 the Edmond defendants. And -- and just for the record, our
4 position, the Edmond -- the position of the Edmond defendants
5 on the motion to dismiss aligns with what Mr. Weitman has said
6 for OU. We, likewise, do not believe that there's a need for
7 an evidentiary hearing.

8 And on the issue of the -- the suggested, if you will,
9 amendment to the amended complaint to address how the reference
10 to the Edmond defendants, we would not object to plaintiffs'
11 request for leave to amend to name the district, and we would
12 not anticipate any further objection to the designation of the
13 parties if only Edmond Public Schools, which was the named
14 defendant in this case. Thank you.

15 THE COURT: Thank you.

16 All right. I want to -- I understand the parties'
17 positions as far as an evidentiary hearing, and I want to make
18 sure that you-all understand what you're agreeing to. So by
19 stating that -- and taking the position that no evidentiary
20 hearing is needed and that the Court may decide the issues
21 raised in the motion -- the motion for preliminary injunction
22 on the briefs as submitted, that necessarily means that you
23 will stipulate that the evidence, except where objected to
24 previously, that that evidence may be considered by the Court,
25 and in particular that affidavit testimony may be considered

1 without any right of cross-examination of those witnesses. Is
2 that the plaintiff's position? Do you so stipulate?

3 MR. SYKES: Yes, Your Honor.

4 THE COURT: And the state defendants, do you agree
5 and stipulate to that?

6 MR. WEST: This is Zach West with the attorney
7 general's office for defendants 1-18 again. And, yes, we
8 would -- the way you have phrased it, we would agree that it
9 may be considered and -- in the motion, within light of some of
10 the objections made and obviously not -- not stipulating on our
11 part that it's true, but that it may be considered.

12 THE COURT: Yes. And the OU defendants, do you
13 agree and so stipulate?

14 MR. WEITMAN: Dan Weitman for OU. Yes, Your Honor.

15 THE COURT: And the Edmond defendants, do you,
16 lastly, agree and so stipulate?

17 MR. FUGITT: Andy Fugitt. Yes, Your Honor.

18 THE COURT: All right. Then we're going to proceed
19 at least on that basis. It may be that as I get into the
20 motions that -- or into the motion and the briefing that -- and
21 I have reviewed everything submitted so far, but as I really
22 get down into the issues, it may be that I think that there are
23 evidentiary issues that are just going to have to be sorted out
24 through a hearing. And in that case, I'll certainly notify you
25 of that and will probably have another status conference to

1 discuss when and the extent of that hearing, but I'm for now
2 going to assume that we will be able to proceed on the -- on
3 the basis discussed and agreed to by all the parties.

4 I'll say as far as the question that I had raised on
5 potentially narrowing the defendants to those folks that are
6 really necessary to be in the case, I'm going to let counsel
7 try to sort that out, and I would direct you to just confer
8 amongst counsel on those issues.

9 In general, I will tell you in advance that I'm certainly
10 prepared to grant a leave to amend to narrow the defendants if,
11 you know, there is some stipulation or agreement that one
12 particular entity or person is sufficient to achieve the
13 purposes that you're trying to achieve through the lawsuit as
14 to -- and I mean that as to any particular set of defendants.
15 So if -- if you can narrow your suit against the Edmond
16 defendants to the Edmond school district and there's a
17 stipulation to that effect that gets you what you need, then I
18 think that that would be in everyone's interest, but I'm going
19 to leave it up to you. I'll just tell you in advance that I
20 would grant any leave to amend that would be requested in that
21 regard if it's going to streamline things and make it more
22 efficient and easier on everyone.

23 Let me ask counsel in general, but particularly counsel
24 for the plaintiffs, I would describe the briefing on the motion
25 for preliminary injunction as, while certainly insistent about

1 the rights that are being asserted through the lawsuit, that
2 there hasn't been any great manifest urgency that's been shown
3 in the briefing.

4 We certainly intend to get you an order as soon as
5 possible, but I'm not aware of any events that might provide
6 some added urgency, something that's coming up that you're
7 particularly concerned about, but tell me if I'm wrong on that.

8 MR. SYKES: Thank you, Your Honor.

9 Respectfully, we do think that there is a significant
10 urgency to providing clarity to Oklahoma educators, students,
11 and the K-12 system and higher ed as well.

12 THE COURT: And I certainly understand that, but
13 I --

14 MR. SYKES: -- subject to.

15 THE COURT: Let me say, I certainly understand that
16 in general you think that this is an urgent matter, and I
17 didn't mean to be dismissive of that. I just note that there's
18 no particular event that I'm aware of that means you got to
19 have a ruling by such and such a date or things are really
20 going to jump off a cliff. So with that clarification.

21 MR. SYKES: Thank you, Your Honor. No. I think in
22 that way it's not as if we are litigating the occurrence of a
23 particular event on a particular day that we need a decision
24 before. So, no, there is not something in the calendar that
25 the Court needs to see as a deadline, but I would just

1 underscore the sort of underlying need for urgency. And, of
2 course, you know, it is Black History Month around the corner,
3 so the issue will become more pertinent in the coming weeks.

4 THE COURT: All right. Say that again. Say that
5 again, please.

6 MR. SYKES: I was going to say -- sorry. I'm
7 trying to -- the only thing in the calendar worth noting is
8 that Black History Month is around the corner. And, therefore,
9 the questions that we raise and the harms that are being
10 suffered in classrooms will only be compounded in the coming
11 weeks.

12 THE COURT: Understand.

13 From the defendants, is there anything that you'd add as
14 far as the general urgency of the determinations that need to
15 be made by the Court?

16 MR. WEST: Zach West with, again, defendants 1-18.
17 No, I don't think we would add anything. We are not aware of
18 any specific dates at which there would need to be some -- some
19 decision made by.

20 THE COURT: Anything from either of the OU
21 defendants or the Edmond defendants in that regard?

22 MR. WEITMAN: Dan Weitman for OU. We have nothing
23 to add, Judge.

24 MR. FUGITT: Andy Fugitt for the Edmond defendants.
25 Your Honor, I would just point out that K-12 curriculum in

1 Edmond, and I anticipate every K-12 school district, was set
2 last July, August, and is in place through the end of this
3 calendar school year. Thank you.

4 THE COURT: All right. Okay. That answers all of
5 my questions for now, at least, as far as the procedures to be
6 followed in determining the motion for preliminary injunction.

7 Is there anything else that we can get accomplished while
8 we're all together? Anything from the plaintiffs?

9 MR. SYKES: Emerson Sykes for the plaintiffs again,
10 Your Honor.

11 The only thing I would just add to your last question is
12 the one thing that's in the calendar that is relevant is that
13 the state is right now collecting comments on the --
14 implementing regulations and rules for HB1775. So to the
15 extent that the Court can provide clarity before the state, you
16 know, has to come up with rules implementing an
17 unconstitutional law, we think that that is a change that is
18 imminent in the process that's ongoing as well. But other than
19 that, I think we have covered what we hoped to cover today and
20 look forward to hearing from you.

21 THE COURT: All right. So right now is the
22 operative rule still the emergency rule that had been
23 implemented?

24 MR. WEST: Zach West with defendants 1-18. Your
25 Honor, I believe that is correct, that the emergency rules that

1 have been in place for awhile are still the operative rules.

2 THE COURT: And there is a process underway for a
3 permanent rule?

4 MR. WEST: Yes, Your Honor.

5 THE COURT: And can you give me any sense of the
6 timeline on that?

7 MR. WEST: Unfortunately, Your Honor, I do not have
8 the specifics of that in front of me. If need be, I can easily
9 determine those within the next probably 30 minutes and flag
10 that for the Court, but I do not have the exact specifics in
11 front of me of when the comments are due and then when the rule
12 has to actually be released. It is, I think, fairly soon, but
13 I hesitate to say a date because I'm just not certain.

14 THE COURT: Is all of that public record, I would
15 assume?

16 MR. WEST: I would assume so, yes. I believe so.
17 I -- I think I have received it from talking to people that
18 it's, you know, not in public record, but I assume that you
19 could look that up in public record as well.

20 THE COURT: I'm going to do that then. And if it
21 turns out that I have some questions after that, then I may
22 require some additional briefs or just a notice that the
23 parties might jointly submit just so I have a -- a sense of
24 where the calendar is on that.

25 Turning then to the OU defendants and the Edmond

1 defendants, my question was is there anything else that we can
2 get accomplished while we're all together?

3 MR. WEITMAN: Dan Weitman for the OU defendants.

4 Your Honor, I think the only other thing, I think the
5 defendants jointly filed a motion to strike, or in the
6 alternative for a sur-reply, and I don't know if anything has
7 come of that yet. If there's going to be a sur-reply, I think
8 we'd kind of like the opportunity to submit that before your
9 consideration.

10 THE COURT: I will certainly answer that question
11 before -- or if I answer it in the -- in the alternative where
12 I would allow the sur-reply, I would certainly do that before
13 issuing a final determination.

14 Anything else from the Edmond defendants?

15 MR. FUGITT: Your Honor, Andy Fugitt. Nothing
16 further from us. Thank you.

17 THE COURT: All right. Okay. Thank you, everyone.
18 I appreciate all the input and will move forward under the
19 basis discussed, as I said, with the caveat that it may be that
20 I decide that an evidentiary hearing is just needed whether you
21 think it's not, but I'm going to try to do it on the briefs and
22 we'll see how that goes.

23 All right. Thank you, all.

24 We are adjourned.

25 (Court adjourned.)

REPORTER'S CERTIFICATION

I, Emily Cripe, Federal Official Realtime Court Reporter, in and for the United States District Court for the Western District of Oklahoma, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 19th day of October, 2023.

/S/ Emily Cripe

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